REMARKS

This Amendment is submitted in reply to the Final Office Action dated December 23, 2009. Applicant respectfully requests reconsideration and further examination of the patent application pursuant to 37 C.F.R. § 1.113.

Summary of the Examiner's Objections and Rejections

Claims 2-8 and 10-17 stand objected to because of the clause "adapted to" which suggests that the claim limitation is optional.

Claim 20 stands objected to because of a typo "...of a plurality o data elements" which should be "...of a plurality of data elements".

Claims 1-3, 13, 18-21, 31 and 36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Echigo (US 20030217091).

Claims 4-7, 10, 17, 22-25, 28, 30 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Echigo (US 20030217091) in view of Kimoto (US 2002/0094028).

Claims 8, 9, 11, 12, 14-16, 26, 27, 29, and 32-34 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Summary of Claim Amendments

Applicant has amended claims 2-8, 10-11, 13-17 and 20 to correct various informalities. No new subject matter has been added.

Remarks regarding Objections to Claims 2-8 and 10-17

Claims 2-8 and 10-17 stand objected to because of the clause "adapted to" which suggests that the claim limitation is optional. Applicant has amended claims 2-8, 10-11 and 13-17 to change the term "adapted" to the term "configured" and as such respectfully requests the removal of this objection.

Remarks regarding Objections to Claim 20

Claim 20 stands objected to because of a typo "...of a plurality o data elements" which should be "...of a plurality of data elements". Applicant has amended claim 20 to correct the typo and as such respectfully requests the removal of this objection.

Remarks regarding Objections to Claims 8, 9, 11, 12, 14-16, 26, 27, 29, and 32-34

Claims 8, 9, 11, 12, 14-16, 26, 27, 29, and 32-34 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for allowing claims 8, 9, 11, 12, 14-16, 26, 27, 29, and 32-34, however as discussed below Applicant respectfully submits that the pending independent claims 1 and 19 are patentable in view of Echigo and Kimoto or any combination thereof.

Remarks regarding the §102(e) and §103(a) rejections

Applicant respectfully traverses the anticipation rejection of pending independent claim 1 in view of Echigo. The pending independent claim 1 is as follows:

> 1. A transmission device for prioritising data elements of a data stream for transmission to a receiving device, comprising:
> decodability determining means for determining a decodability of a current data element, the decodability indicating the extent to which the current data element is decodable at the receiving device;
> prioritising means for assigning a priority to the current data element based on the determined decodability; and
> a transmitter controller for scheduling a transmission of the current data element to the receiving device based on the priority (emphasis on main distinguishing limitations).

In rejecting independent claim 1, the Examiner cited Echigo's paragraphs [0025] and [0072] which are as follows:

> [0025] To achieve the above objects, an embodiment of the present invention is implemented as a network system comprising a contents provider that provides contents and a client that acquires the contents, wherein: the contents provider attaches information on communication priorities to the contents based on importance which is determined from the meaning of the contents and sends the contents to the client using a protocol which controls quality of service based on

the priorities; and the client receives the contents transmitted by the contents provider.

[0072] Regarding data file formats of contents, MPEG-4 Video (Simple Profile) format and MP4 file format are used according to this embodiment. MPEG-4 Video (Simple Profile) is encoded into two types of frame: an I (Intra coded) frame and P (Predictive coded) frame. I-frames are arranged periodically and used as starting points for random access or error recovery. They are encoded independently of other frames instead of using predictive coding. P-frames are predictively coded with reference to past I- or P-frames.

Applicant agrees with the Examiner's statement that "content can be coded using different format" (see page 3 in the Office Action). Thus, Echigo does teach a transmission device that can encode a data element based on different formats (see paragraph [0072]). However, Applicant respectfully disagrees with the Examiner's conclusion that Echigo discloses a transmission device including a "decodability determining means for determining a decodability of a current data element, the decodability indicating the extent to which the current data element is decodable at the receiving device". Echigo does not disclose the claimed transmission device that determines the decodability of a current data element based on the extent to which the current data element is decodable at the receiving device.

Echigo discloses a content provider (transmission device) that provides contents to a client (receiving device) where the content provider attaches information on communication priorities to the content based on importance which is determined from the meaning of the contents and sends the contents to the client using a protocol which controls the quality of service based on the priorities. The importance of the contents is calculated based on metadata which describes information on the contents and profiles which describe values relating to the importance of the contents corresponding to the metadata. In one example, the contents provider supplies metadata and a contents profile to the client which then calculates the importance of the contents based on the metadata and the contents profile as well as on a user profile in its possession and then transmits the calculated importance to the contents provider (see paragraphs [0026]-[0028].

Thus, Echigo's contents provider attaches information on communication priorities to the content based on importance which is determined from the meaning of

the contents and sends the contents to the client using a protocol which controls the quality of service based on the priorities. However, Echigo's content provider does not attach information on communication priorities to the content based on the "the extent to which the current data element is decodable at the client device" which is determined from the meaning of the contents and sends the contents to the client using a protocol which controls the quality of service based on the priorities. In particular, Echigo's "importance" is not the same as the claimed invention's "decodability". In view of at least the foregoing, Applicant respectfully submits that the aforementioned substantial differences between the pending independent claim 1 and Echigo is indicative of the patentability of the pending independent claim 1 and the corresponding dependent claims 2-18.

Furthermore, Applicant would like to point-out that the EPO Examiner in prosecuting the corresponding PCT patent application indicated in the International Preliminary Report on Patentability that Echico (D1) did not anticipate or render obvious the pending claim 1. In particular, the EPO Examiner stated the following:

1.1   The present invention is defined in independent apparatus claim 1 by a

(a)   transmission device for prioritising data elements of a data stream to be transmitted to a receiving device;
(b)   comprising decodability determining means for determining a decodability of a current data element;
(b)(1)   such that the decodability of (b) is indicating the extent to which the current data element of (b) is decodable at the receiving device of (a);
(c) prioritising means for assigning a priority to the current data element of (b) based on the determined decodability of (b);
(d) and a transmitter controller for scheduling a transmission of the current data element of (b) to the receiving device of (a) based on the priority assigned in (c).

2.   The prior art is given by D1, see above, which discloses a transmission device for prioritizing data elements of a data stream to be transmitted to a receiving device comprising determining means for determining the decodability of the data element at the transmission device, the available bandwidth, the channel quality, the content type of a current data element and the preferences of users. The transmission device of D1 is assigning a priority to the current data element based on the content importance set in advance by a content provider and sends the current data element based on the determined priority to the receiving device.

3. The difference between the subject matter of claim 1 and D1 is given by the features

(b)(1) and (c). The novelty (Art 33(2) PCT) of the subject matter of claim 1 (and hence also of claims 19, 37, and 38) follows then a fortiori.

Applicant respectfully submits that dependent claims 4-7, 10, 17, 22-25, 28, 30 and 35 are patentable over Echigo in view of Kimoto. The above remarks regarding Echigo's deficiencies with respect to independent claim 1 are incorporated here. Kimoto does not cure Echigo's deficiencies and as such respectfully requests the allowance of claims 4-7, 10, 17, 22-25, 28, 30 and 35.

Applicant respectfully submits that pending independent claim 19 is patentable over Echigo, Kimoto or any combination thereof. The independent claim 19 recites the same distinguishing limitations that have been discussed above with respect to independent claim 1. As such, the aforementioned remarks regarding the patentability of independent claim 1 apply as well to independent claim 19. Accordingly, Applicant respectfully requests the allowance of the pending independent claim 19 and the corresponding dependent claims 20-36.

CONCLUSION

In view of the foregoing remarks, Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. Applicant, therefore, respectfully requests that the Examiner withdraw all objections and rejections and issue a Notice of Allowance for pending claims 1-36.

The Commissioner is hereby authorized to charge any fees for this paper and the co-filed Information Disclosure Statement to Deposit Account No. 50-1379.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,

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